

Farm Service Agency, USDA

§ 784.12

which are contained in the application to be eligible for such benefits.

§ 784.9 Year 2, Year 3, and Year 4 rate of payment and limitations on funding.

Subject to the availability of funds, and the proration rules set out in § 784.10, Year 2, Year 3, and Year 4 payments may be made to sheep and lamb operations at the following rates:

- (a) \$3 for each qualifying feeder lamb; plus
- (b) \$5 for each qualifying slaughter lamb marketed in any covered month except for June or July of the applicable program year, and
- (c) \$8 for each qualifying slaughter lamb marketed in June or July of the applicable program year.
- (d) \$18 for each qualifying ewe lamb retained or purchased for breeding purposes for Year 3 and Year 4 only.

§ 784.10 Availability of funds for Year 1 through Year 4.

(a) Total payments under this part, unless otherwise determined by the FSA, cannot exceed \$67.7 million. At the close of Year 3, FSA will determine if the remaining available funds will be sufficient for program Year 4. In the event that funds should be insufficient to complete the expected payments to eligible producers during program Year 4, then the payment rates for that program year shall be prorated by a national factor so as to reduce the expected payments to be made to the amount available and payment shall be made at those rates until monies are expended. Payments made during a prorated program year shall be made first-come, first-served so long as there are monies available in the manner set for in these regulations. Payments for preceding years will not be affected.

(b) A national factor shall be determined, if necessary for slaughter lamb and feeder lamb payments based on the factoring of the remaining available funds at the conclusion of Year 3 divided by the average number of slaughter and feeder lambs that qualified for benefits during Year 2 and Year 3.

(c) Of the \$67.7 million of total funds under this part, \$26 million is specifically earmarked for the ewe lamb incentive payments, with a target of \$13

million per year for Year 3 and Year 4. Those monies (\$26 million) should be used only for the ewe incentive payments and no other funds shall be used for those payments. A national factor shall be determined, if necessary for ewe lamb payments based on the factoring of the remaining available funds at the conclusion of Year 3 divided by the number of ewe lambs that qualified for ewe lamb payments during Year 3.

(d) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA shall reduce the national factor in such manner as FSA, in its sole discretion, finds fair and reasonable.

§ 784.11 Appeals.

Any sheep and lamb operation which is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title or otherwise applicable.

§ 784.12 Misrepresentation and scheme or device.

(a) A person or operation shall be ineligible to receive assistance under this program if it is determined by FSA to have:

- (1) Adopted any scheme or device which tends to defeat the purpose of this program;
- (2) Made any fraudulent representation; or
- (3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any sheep and lamb operation or person engaged in acts prohibited by this section and any sheep and lamb operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this part and for related charges. The remedies provided in this part shall be in addition to other civil,

§ 784.13

criminal, or administrative remedies which may apply.

§ 784.13 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must, also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 784.14 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 784.15 Maintenance and inspection of records.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the sheep and lamb operations under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during the regular business hours, authorized representatives of USDA shall have access to the premises of the sheep and lamb operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation

7 CFR Ch. VII (1-1-04 Edition)

who does not comply with the provisions of paragraphs (a) or (b) of this section shall be refunded with interest.

§ 784.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, then all such payments made under this part to any sheep and lamb operation or person shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing an application for payment as having an interest in an operation or payment shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation or payment.

(c) Interest shall be applicable to refunds required of any person under this part if FSA determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation for funds, from the date FSA made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of FSA alone for refunds resulting from those violations determined by FSA to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 792.